

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8526 OF 2023

Meena Arun Tadkodkar ...Petitioner

V/s.

Padma Chaturmal Thakur ...Respondents
(deceased) thru' her Legal Heirs
(i) Mr. Naresh C. Thakur & Ors.

Mr. Abhijit Patil i/by Mr. Santosh B. Sitap for
Petitioner.

Mr. Suraj Iyer h/for Ms. Archana Khan for
Respondents.

CORAM: MADHAV J. JAMDAR, J.
DATE: 28th July 2023

P.C.:

1. Heard learned Counsel appearing for the Petitioner and the learned Counsel appearing for the Respondents. Learned Counsel appearing for the Respondents states that the Vakalatnama will be filed within two weeks.

2. The Petitioner, by the present Writ Petition filed under Article 227 of the Constitution of India is challenging the legality and validity of the order dated **4th May 2023** passed by the learned Appellate Bench of Small Causes Court, Mumbai(Bandra Branch) below **Exhibit-6** in A1 Appeal No. 147 of 2022.

3. By the impugned order, the learned Appellate Bench while staying the decree of possession granted by the learned Trial Court fixed an amount of Rs.35,000/- per month as compensation which the Petitioner was directed to deposit in the Court as a condition for staying the eviction decree. The said order is passed by the learned Appellate Court in terms of the law laid down by Hon'ble Supreme Court in **Atmaram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.**¹.

4. Learned Counsel appearing for the Petitioner relied on the valuation report of Valuer G.N. Gandhe. As per the said valuation report, carpet area of the suit premises is 480 sq. ft. and the said valuation report states that Rs.25/- Lakhs + Rs.30/-, lakhs lumpsum amount is benefit value of tenancy right. The said valuation report cannot be relied on in terms of **Atmaram Properties Pvt. Ltd.** (supra). What is to be determined by the Court as condition of stay of eviction decree is the market rent which the landlord would receive if the landlord gets the possession of the suit premises in terms of the eviction decree. Therefore, said valuation report dated 6th November 2022 is totally irrelevant and is of no assistance to the Court.

5. The Respondents have relied on leave and license agreement dated 4th December 2013 wherein Rs.30,000/-

1 (2005) 1 Supreme Court Cases 705

compensation was agreed to be shown with respect to the premises, which is at Santacruz (West). On the basis of material on record, the learned Appellate Court has fixed Rs.35,000/- as monthly compensation. Learned Counsel appearing for the Petitioner fails to point out any illegality or perversity in the impugned order.

6. This is not a case where the interference in the impugned order is required under Article 227 of the Constitution of India.

7. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

8. However, time limit granted by order dated 4th May 2023 to deposit said amount is extended for further period of three months.

(MADHAV J. JAMDAR, J.)

Note : Corrected as per speaking to minutes of order dated 4th August 2023.

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